

## 第 39 回知財法務 問題・原文ファイル

★★★ <第 39 回知的財産翻訳検定試験【第 19 回英文和訳】> ★★★

《知財法務実務》

### 【解答にあたっての注意】

1. 問題の指示により翻訳してください。解答は別紙「解答ファイル」に記載してください。
2. 翻訳が求められる箇所は、\*\*\* 翻訳 START \*\*\*から\*\*\* 翻訳 END \*\*\*までの範囲です
5. 全体の解答字数に特に制限はありません。適切な箇所で改行してください。
6. 課題文に段落番号がある場合、これを訳文に記載してください。
7. 設問は複数あります。それぞれの設問の指示に従い、すべて解答してください。

## 第 39 回知財法務 問題・原文ファイル

問 1. 以下に示す英文は、アメリカ合衆国・連邦巡回控訴裁判所の判決文の一部です。注意書きに従って、この英文を日本語に翻訳してください。

< 翻訳に際しての注記 >

- 翻訳文だけを読んでも内容を正確に且つ容易に理解できるよう、文書として自然な日本語訳を心がけてください。必要であれば、内容の正確性が担保される限りにおいて、一文を区切って二文で表現するなど、工夫を凝らしていただいて構いません。
- 文中に引用されている他の判決や文献等の記載（例えば Mann v. Palmer, 713 F.3d 1306, 1316 (11th Cir. 2013) 等）は、訳出せずに英語のまま日本語翻訳文中に残してかまいません。

The district court did perform an Alice/Mayo analysis on the remaining claims and dismissed pursuant to Rule 12(b)(6), concluding that the claims are ineligible. The subsequent refusal to permit an amended complaint was erroneous because at that stage there certainly were allegations of fact that, if Aatrix's position were accepted, would preclude the dismissal.

\*\*\* 翻訳 **START** \*\*\*

The district court denied, without explanation, Aatrix's motion to amend its complaint. The Eleventh Circuit reviews a district court's denial of leave to amend for abuse of discretion. Mann v. Palmer, 713 F.3d 1306, 1316 (11th Cir. 2013). A district court should freely give leave to amend a complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2); see Perez v. Wells Fargo N.A., 774 F.3d 1329, 1340 (11th Cir. 2014). A district court may deny a motion to amend on numerous grounds such as "undue delay, undue prejudice to the defendants, and futility of the amendment." Mann, 713 F.3d at 1316; see also Perez, 774 F.3d at 1340-41 (listing other factors). The Eleventh Circuit reviews de novo a district court's denial of leave to amend for futility. Mann, 713 F.3d at 1316. A justification for denying leave to amend may be declared or apparent from the record. See Garfield v. NDC Health Corp., 466 F.3d 1255, 1270 (11th Cir. 2006) (citing Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)).

In this case, the district court denied Aatrix's motions stating in full that "[u]pon consideration of the filings and the relevant case law, the Court sees no reason to reconsider its prior determination." J.A. 34. The district court gave no reason for its denial of Aatrix's motion to amend, and this is not a case where the record contains "ample and

obvious grounds for denying leave to amend." *Rhodes v. Amarillo Hosp. Dist.*, 654 F.2d 1148, 1154 (5th Cir. 1981).fn2 Indeed, the only argument Green Shades makes on appeal is that the amendment would be futile because the claims "at issue are invalid on their face and a more carefully drafted complaint would do nothing to alter" their validity. Appellee's Br. 4, 12. We do not agree.

The proposed second amended complaint contains allegations that, taken as true, would directly affect the district court's patent eligibility analysis. These allegations at a minimum raise factual disputes underlying the § 101 analysis, such as whether the claim term "data file" constitutes an inventive concept, alone or in combination with other elements, sufficient to survive an *Alice/Mayo* analysis at the Rule 12(b)(6) stage. *Alice/Mayo* step two requires that we consider whether the claims contain "an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 134 S.Ct. at 2357 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72, 79, 132 S.Ct. 1289, 182 L.Ed.2d 321 (2012)). We have held that patentees who adequately allege their claims contain inventive concepts survive a [1127] § 101 eligibility analysis under Rule 12(b)(6). See, e.g., *BASCOM*, 827 F.3d at 1352 (so holding after analysis of allegations). Here, allowing Aatrix to file the proposed amended complaint, which alleges facts directed to the inventive concepts in its claimed invention, would not be futile. See *FairWarning IP*, 839 F.3d at 1097.

Aatrix's proposed second amended complaint supplies numerous allegations related to the inventive concepts present in the claimed form file technology. It describes the development of the patented invention, including the problems present in prior art computerized form file creation. J.A. 418-33. It then presents specific allegations directed to "improvements and problems solved by the Aatrix patented inventions." J.A. 454-57 (emphasis removed). As directed to the claimed data file, for example, the proposed second amended complaint alleges:

The inventions claimed in the Aatrix Patents allow data to be imported into the viewable electronic form from outside applications. Prior art forms solutions allowed data to be extracted only from widely available databases with published database schemas, not the proprietary data structures of application software. The inventions of the Aatrix Patents allowed data to be imported from an end user application without needing to know proprietary database schemas and without having to custom program the form files to work with each outside application. The inventions of the Aatrix Patents permit data to

be retrieved from a user application and inserted into a form, eliminating the need for hand typing in the values and eliminating the risk of transcription error.

J.A. 455 ¶ 109; see also J.A. 431-32 ¶¶ 43-46 (describing the development and success of the claimed data file despite the difficulty in obtaining data from other software vendors given proprietary data structures). These allegations about the claimed data file claim that the data file is directed to an improvement in importing data from third-party software applications.

\*\*\* 翻訳 END \*\*\*

The complaint also alleges that "[t]his invention in-creased the efficiencies of computers processing tax forms." J.A. 429 ¶ 39. The complaint alleges that the claimed invention "saved storage space both in the users' computers' RAM (Random Access Memory, which is fast, short-term storage used by running programs) and hard disk (permanent slower storage used for files and programs when not running)." J.A. 429 ¶ 38. The claimed invention, according to the complaint, reduces the risk of "thrashing," a condition which slowed down prior art systems. J.A. 429-30 ¶ 39. The complaint alleges that the claimed software uses less memory, results in faster processing speed, and reduces the risk of thrashing which makes the computer process forms more efficiently. J.A. 429 ¶ 39. These allegations suggest that the claimed invention is directed to an improvement in the computer technology itself and not directed to generic components performing conventional activities. We have repeatedly held that inventions which are directed to improvements in the functioning and operation of the computer are patent eligible. See, e.g., Visual Memory LLC v. NVIDIA Corp., 867 F.3d 1253, 1258-59 (Fed. Cir. 2017); Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1300-02 (Fed. Cir. 2016); Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1336 (Fed. Cir. 2016); see also DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1257 (Fed. Cir. 2014). Viewed in favor of Aatrix, as the district court must at the Rule 12(b)(6) stage, the complaint alleges that the claimed combination improves the functioning and operation of the [1128] computer itself. These allegations, if accepted as true, contradict the district court's conclusion that the claimed combination was conventional or routine. J.A. 26. Therefore, it was an abuse of discretion for the district court to deny leave to amend.

問 2. 以下は、ある製品に関する販売店契約書（架空）の抜粋です。翻訳対象箇所を日本語に翻訳してください。

< 翻訳に際しての注記 >

（１）翻訳対象箇所は 1 箇所、\*\*\* 翻訳 START \*\*\*、\*\*\* 翻訳 END \*\*\*で始終点を示してあります。なお、（省略） は中略を意味するもので、そのまま転記してください。

（２）翻訳に際して、特別に定義されている用語（先頭大文字の用語です。以下「定義語」といいます。）については、翻訳文でも定義語であることが一目瞭然となるように（定義語でない語と紛らわしくないように）訳語を工夫してください。

（３）翻訳文だけを読んでも内容を正確に且つ容易に理解できるよう、文書として自然な翻訳を心がけてください。必要であれば、内容の正確性が担保される限りにおいて、一文を区切って二文で表現するなど、工夫を凝らしていただいて構いません。

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

**"Agreement"** means this distributor agreement including the Exhibits, Schedules and Appendices to it, all of which are incorporated herein and which form part of this Agreement.

**"Claim"** has the meaning given to that expression in clause 5.11.

**"Documentation"** means any Product specific documentation and other materials provided or otherwise made available by NIPTA to the Distributor relating to the operation, specification, structure or use of the applicable Products (or any part thereof).

**"Term"** means the Initial Term and any Renewal Terms.

**"Territory"** means the country or countries specified in Schedule 1.

**"Trademarks"** means the trademark registrations and applications identified in Schedule 2 together with any further trademarks which NIPTA may permit or procure permission for the Distributor by express notice in writing to use in respect of the Products.

（省略）

\*\*\*翻訳 START\*\*\*

**"Intellectual Property Rights"** means all intellectual and industrial property rights in any part of the world, including any invention, patents, utility models, copyright or related rights, trademarks, trade names, business names, rights in get up and trade dress, goodwill and the right to sue for passing off or unfair competition, Internet domain names, design rights, designs, service marks, database rights, rights to use and protect the confidentiality of Confidential Information (including know-how and trade secrets) and any other rights of a similar nature whether or not any of the same are registered or unregistered or capable of protection by registration, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future.

2. (省略)

3. (省略)

4. (省略)

5. **INTELLECTUAL PROPERTY RIGHTS**

5.1 All Intellectual Property Rights in and to the Products and the Documentation belong, and shall belong, to NIPTA and its licensors (as applicable), and the Distributor shall have no rights in or to the Products and the Documentation other than as expressly granted under this Agreement.

5.2 The Distributor shall take all steps as NIPTA may reasonably require, at the expense of NIPTA, to assist NIPTA in maintaining the validity and enforceability of the Intellectual Property Rights of NIPTA during the Term.

5.3 The Distributor shall not do, or omit to do, anything in its use of the Intellectual Property Rights that could adversely affect their validity or reputation.

5.4 The Distributor shall not sub-license, transfer or otherwise deal with the rights of use of the Trade Marks granted under this Agreement.

5.5 NIPTA makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Products or the Documentation, or in respect of the

Trademarks, nor as to whether the same infringe on any Intellectual Property Rights of third parties.

5.6 NIPTA hereby grants to the Distributor the non-exclusive right, during the Term and in the Territory, to use the Trademarks in the promotion, advertisement and distribution of the Products, subject to the terms and conditions of this Agreement. The Distributor acknowledges and agrees that all rights in the Trademarks shall remain with NIPTA and that the Distributor has and will acquire no right in them by virtue of the discharge of its obligations under this Agreement, except for the right to use the Trademarks as expressly provided in this Agreement.

5.7 The Distributor shall market and distribute the Products only under the Trademarks, and not in association with any other trademark, brand or trade name, except as permitted in any branding guidelines issued by NIPTA (including in the Guide). The Distributor shall ensure that the appropriate Trademarks shall appear on all advertisements for the Products, followed by the symbol "®" or the letters "TM", as appropriate.

5.8 All representations of the Trademarks that the Distributor intends to use shall be submitted to NIPTA for written approval before use.

5.9 The Distributor shall comply with all rules for the use of the Trademarks issued by NIPTA (including those set out in any branding guidelines issued by NIPTA, including the Guide).

5.10 The Distributor shall not: use any of the Trademarks in any way which might prejudice their distinctiveness or validity or the goodwill of NIPTA therein; use in relation to the Products any trademarks other than the Trademarks without obtaining the prior written consent of NIPTA; or use any trademarks or trade names so resembling any trademark or trade names of NIPTA as to be likely to cause confusion or deception.

5.11 The Distributor shall give notice in writing to NIPTA in the event that the Distributor becomes aware of any: infringement or suspected infringement of the Trademarks or any other Intellectual Property Rights in or relating to the Products and Documentation; or any claim that any Product or Documentation, or the manufacture (in respect of Hardware Products), use, sale or other disposal of any Product or Documentation, whether or not under the Trademarks, infringes the Intellectual Property Rights of any third party ("**Claim**").

5.12 In respect of any matter that falls within clause 5.11: NIPTA shall in its absolute discretion decide what action to take in respect of the matter (if any); NIPTA shall conduct and have sole control over any consequent action that it deems necessary; the Distributor shall not make any admission (other than to NIPTA), agreement or compromise without the prior written consent of NIPTA, and shall provide NIPTA with all assistance that NIPTA may reasonably require in the conduct of any claims or proceedings; and NIPTA shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action.

\*\*\*翻訳 END\*\*\*

5.13 Subject to clause 5.14 and clause 7, NIPTA shall indemnify the Distributor against all liabilities, costs, expenses, damages and losses (including reasonable legal costs) suffered or incurred by the Distributor arising out of or in connection with any matter that falls within clause 5.11, provided that the Distributor: gives prompt written notice of the Claim to NIPTA, specifying the nature of the Claim in reasonable detail; does not make any admission of liability (other than to NIPTA), agreement or compromise in relation to the Claim without the prior written consent of NIPTA; allows NIPTA the exclusive conduct of any proceedings in respect of the Claim including defence and settlement thereof; and provides NIPTA with all assistance that NIPTA may reasonably require in the conduct of any claims or proceedings (at NIPTA's expense).

5.14 Clause 5.13 shall not apply in respect of any Claim that arises out of or in connection with: any combination of a Product with, or use of a Product in connection with, hardware or software that is not provided, recommended or approved by NIPTA; any improper use, misuse or unauthorized alteration of a Product; any Product that is designed, altered or modified pursuant to specifications provided by any Distributor, Reseller and/or End Customer; or any use of a Product in a manner inconsistent with the then-current Documents.

5.15 In the event that a court or arbitrator finally establish that any Product or Documentation, or the manufacture (in respect of Hardware Products), use, sale or other disposal of any Product or Documentation infringes the Intellectual Property Rights of a third party, or should NIPTA consider that the Products may be the subject of a third party claim for infringement of Intellectual Property Rights, NIPTA may, at its own expense and sole option, either: obtain the right for the Distributor to continue using the



relevant Products; substitute equivalent products for the infringing Products; or modify the infringing Products so as to eliminate the infringement.

5.16 Subject to clause 6, the foregoing states the entire liability and warranty of NIPTA with respect to the infringement of any Intellectual Property Rights by the Products or Documentation, or any part of any of them.